

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

IN RE:

ADAM JOHN STEVERSON &
VICKI LEE STEVERSON,

CASE NO.: 16-50224-KKS
CHAPTER: 13

Debtors.

ORDER SUSTAINING, WITHOUT PREJUDICE, CHAPTER 13
TRUSTEE'S OBJECTION TO CONFIRMATION OF SECOND
AMENDED CHAPTER 13 PLAN (Doc. 43)

THIS CASE came before the Court on April 27, 2017 to consider confirmation of the Debtors' second amended Chapter 13 Plan (the "Plan," Doc. 31) and the Chapter 13 Trustee's objection to confirmation.¹ The Trustee filed a "limited" memorandum of law in support of her Objection and the Debtors filed a response (Docs. 38 & 39). The Trustee's remaining objection to confirmation centers on Debtors' inclusion of a "miscellaneous expense" in their calculation of disposable income for purposes of the means test.²

¹ Docs. 33, 36 & 43, collectively, the "Objection.

² Although the Trustee at one point objected to other provisions of Debtors' plan (Doc. 36), her most recent objection is limited to the "miscellaneous expense" issue (Doc. 43).

For the reasons set forth below, the Court finds that in order to be entitled to deduct a monthly “miscellaneous” expense, Debtors will have to provide proof to the Trustee, or to the Court, that this expense is applicable. So, the Trustee’s Objection will be sustained, without prejudice to Debtors having an opportunity to present evidence on this issue.

Section 1325(b)(2) defines disposable income for purposes of confirmation of a Chapter 13 plan as “current monthly income received by the debtor ... less amounts reasonably necessary to be expended.”³ Because these Debtors are above-median debtors as defined in the Bankruptcy Code,⁴ the amounts that Debtors may claim as reasonable living expenses when calculating their disposable income are governed by Section 1325(b)(3) of the Code. Section 1325(b)(3) directs that the means test, codified in 11 U.S.C. §707(b)(2)(A), identifies which expenses qualify as “amounts reasonably necessary to be expended.”⁵

³ *In re Prestwood*, 451 B.R. 180, 183-84 (Bankr. N.D. Fla. 2011).

⁴ An above-median debtor is defined as a debtor whose annualized current monthly income is above the median family income in the applicable state that corresponds to the size of the debtor’s household. *See* 11 U.S.C. § 1325(b)(3) (2017). The Debtors’ combined income is above the median income for a family of four living in Florida.

⁵ 11 U.S.C. § 1325(b)(3) (2017). The provisions of section 707(b)(2)(A) are intended to provide some measure of uniformity in calculating the monthly disposable income for above-median debtors. *See* 146 Cong. Rec. S11683-02, at S11703 (Dec. 7, 2000) (statement of Sen. Grassley) (“It is intended that there be a uniform, nationwide standard to determine disposable income

Section 707(b)(2)(A)(ii)(I) provides, in pertinent part:

“The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides.”⁶

The Trustee argues that debtors should not be permitted an allowance for “miscellaneous” expenses because Official Form 122C-2 does not include a category for such expenses.⁷ Official Form 122C-2 is titled “Chapter 13 Calculation of your Disposable Income,” and embodies the “means test” established in Section 707(b)(2) of the Code.⁸ Part 1 of Official Form 122C-2 provides, in part:

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15.⁹

used in chapter 13 cases, based upon means test calculations.”). *In re Abaunza*, Case 10-37575-LMI (Bankr. S.D. Fla. May 20, 2011).

⁶ 11 U.S.C. § 707(b)(2)(A)(ii)(I) (2017). “National Standards” refers to the IRS National Standards for Allowable Living Expenses (Cases Filed Between May 1, 2016 and October 31, 2016, Inclusive),

https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/national_expense_standards.htm.

⁷ The Trustee cites to Form 122C-1 in her memorandum, but it is Official Form 122C-2 that requires debtors to list expenses: http://www.uscourts.gov/sites/default/files/form_b_122c-2.pdf.

⁸ *In re Early*, 523 B.R. 804, 807 (Bankr. S.D. Ill. 2014).

⁹ (Emphasis in original.) The form then instructs debtors on how to locate the “IRS standards.” Official Form 122C-2, p. 1.

Part 1, line 5 of that form instructs debtors to enter the number of people who could be claimed as exemptions on their federal tax return, and any additional dependents they support. Line 6 instructs debtors to use the number of people they entered in line 5 “and” the IRS National Standards “to fill in the dollar amount for food, clothing, and **other items**.”¹⁰ The IRS National Standards include, as one of the “other items,” a category of expenses entitled “Miscellaneous.”¹¹ So, while it is true, as the Trustee asserts, that the Official Form does not have a specific line item for “miscellaneous” expenses, because the Official Form sends debtors to the National Standards, the form actually does provide debtors an allowance for a general category of miscellaneous expenses.

The Trustee’s reliance on *Ransom v. FIA Card Services, N.A.* is correct. In *Ransom*, the Supreme Court recognized that the National and Local Standards referenced in Section 707(b)(2)(A)(ii)(I) are tables that the IRS prepares listing allowances for six categories of expenses, including “miscellaneous expenses.”¹² The point of contention in *Ransom*

¹⁰ *Id* (emphasis added).

¹¹ IRS National Standards for Allowable Living Expenses (Cases Filed Between May 1, 2016 and October 31, 2016, Inclusive);

https://www.justice.gov/ust/eo/bapcpa/20160501/bci_data/national_expense_standards.htm.

¹² 562 U.S. 61, 66, 85 n.2 (2011).

was not whether a Chapter 13 debtor was entitled to a deduction for “miscellaneous expenses” in his calculations under the means test. Rather, in *Ransom* the above-median Chapter 13 debtor claimed a deduction for car ownership. Under the IRS’ Collection Financial Standards, the “car ownership” deduction covers monthly loan or lease payments on an automobile. Although the debtor in *Ransom* owned a car, he did not owe any money on that car, either on a loan or a lease.¹³ An unsecured creditor objected to confirmation of Mr. Ransom’s Chapter 13 plan on the basis that the money the debtor carved out for the car ownership expense should be devoted to the plan. The bankruptcy court sustained the objection; its ruling was affirmed by the Ninth Circuit BAP and then the Ninth Circuit.¹⁴ The Supreme Court granted Certiorari and affirmed, holding that a debtor who does not make loan or lease payments may not take the car ownership deduction in calculating projected disposable income under the means test.¹⁵

¹³ The debtor was allowed a separate deduction provided for in the Local Standards for vehicle operation expenses. *Id.* at 71.

¹⁴ *Ransom v. MBNA, America Bank, N.A. (In re Ransom)*, 577 F.3d 1026 (9th Cir. 2009); *Ransom v. MBNA America Bank, N.A. (In re Ransom)*, 380 B.R. 799 (9th Cir. BAP 2007); *In re Ransom*, No.: 06-11566-BAM (Bankr. D. Nev. June 6, 2007).

¹⁵ 562 U.S. at 80.

As the Supreme Court emphasized in *Ransom*, the plain language of Section 707(b) of the Code (the “means test”) permits debtors to claim only monthly expense amounts that are “applicable” to them.¹⁶ In so holding, the Court stated:

As noted, the provision of the Code central to the decision of this case states:

“The debtor’s monthly expenses shall be the debtor’s applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor’s actual monthly expenses for the categories specified as Other Necessary Expenses issued by the [IRS] for the area in which the debtor resides.” § 707(b)(2)(A)(ii)(I).

The key word in this provision is “applicable”: A debtor may claim not all, but only “applicable” expense amounts listed in the Standards.

...

Because the Code does not define “applicable,” we look to the ordinary meaning of the term. ...

...

What makes an expense amount “applicable” in this sense (appropriate, relevant, suitable, or fit) is most naturally understood to be its correspondence to an individual debtor’s financial circumstances. ... A debtor may claim a deduction from a National or Local Standard table ... **if, but only if, that deduction is appropriate to him.**¹⁷

¹⁶ *Id.* at 68.

¹⁷ *Id.* at 68-69 (citations omitted; emphasis added).

Under *Ransom*, in order to constitute “applicable monthly expense amounts,” miscellaneous expenses must be actually incurred by the Debtors. The Debtors here have claimed miscellaneous expenses, but they either do not have any such expenses, or they have refused to provide the Trustee any proof or evidence that they normally incur such expenses.

While this Court recognizes that miscellaneous expenses are conceivably “applicable” to every Chapter 13 debtor, they are allowable under the Bankruptcy Code only if they are relevant to the debtor claiming them.¹⁸ Relevance and applicability are a matter of proof. Here, thus far, we have none. As stated by the Court in *Ransom*, “Congress adopted the means test—‘[t]he heart of [BAPCPA’s] consumer bankruptcy reforms,’ ... and the home of the statutory language at issue here—to help ensure that debtors who *can* pay creditors *do* pay them. ... Requiring a debtor to incur the kind of expense for which he claims a means-test deduction thus advances BAPCPA’s objectives.”¹⁹

¹⁸ *Id.* at 70. (“[A] court must determine “the expense amounts applicable (appropriate, etc.) to each particular debtor. Identifying these amounts requires looking at the financial situation of the debtor and asking whether a National or Local Standard table is relevant to him.”)

¹⁹ *Id.* at 64, 73.

The Trustee acknowledged in her memorandum that she was unable to find a case directly on point. The Debtor also cited no supporting case law. The dearth of case law is apparently due to the fact that creditors and trustees in reported cases have not questioned whether “miscellaneous” amounts listed in the National Standards were “applicable” to their debtors. Regardless, courts have acknowledged the availability of the “miscellaneous” expense category.²⁰ The absence of reported cases on the allowance, or disallowance, of miscellaneous expenses does not mandate a conclusion, as Debtor suggests, that such expenses are automatically allowable.

The Code defines “disposable income” as “current monthly income received by the debtor ... less amounts reasonably necessary to be expended” for the debtor’s maintenance and support.²¹ “Current monthly income” is calculated by averaging the debtor’s monthly income over the six months preceding the filing of the bankruptcy petition.²² Under

²⁰ See *In re Hardacre*, 338 B.R. 718, 723 (Bankr. N.D. Tex. 2006) (“The ‘National Standards’ reflect amounts that are deemed to be reasonable expenditures for five categories of expenses: food, housekeeping supplies, apparel and services, personal care products and services, and miscellaneous expenses.”). See also, *In re Harris*, 522 B.R. 804 (Bankr. E.D.N.C. 2014); *Prestwood*, *supra*, 183-84 (“the Code cogently defines how to calculate the ‘disposable income’ of a Chapter 13 debtor for purposes of confirmation”).

²¹ 11 U.S.C. §1325(b)(2)(A)(i) and (ii) (2017); *In re Harris*, 522 B.R. at 808.

²² *Hamilton v. Lanning*, 130 S.Ct. 2464, 2470 (2010).

Ransom, Chapter 13 debtors, including the Debtors in this case, are entitled to claim monthly “miscellaneous” expenses in accordance with the IRS National Standards only if such an expense category is applicable to them:

Because Congress intended the means test to approximate the debtor’s reasonable expenditures on essential items, a debtor should be required to qualify for a deduction by actually incurring an expense in the relevant category. If a debtor will not have a particular kind of expense during his plan, an allowance to cover that cost is not ‘reasonably necessary’ within the meaning of the statute.²³

If the Debtors cannot resolve the Trustee’s Objection by providing proof that they incur miscellaneous expenses, it will be necessary to take evidence in order to determine whether this is, in fact, true. Otherwise, it is impossible to determine whether “miscellaneous expenses” are *applicable* to these Debtors.²⁴

For the reasons stated, it is

²³ *Ransom*, 562 U.S. at 70.

²⁴ The amount of any deduction for “miscellaneous” expenses is a matter for another day. Courts are split on whether debtors may claim the amount specified in the National Standards, which in the instant case is \$322 per month for miscellaneous expenses, even if their expenses in that category are below the National Standards amount. *See, e.g., In re Jackson*, 537 B.R. 238 (Bankr. E.D. N.C. 2015); *aff’d*, *Lynch v. Jackson*, 845 F.3d 147 (4th Cir. 2017); *amended and superseded by Lynch v. Jackson*, 853 F.3d 116 (4th Cir. 2017) (Chapter 7). *See also In re Christianson*, No.: 15-60288-FRA, 2015 WL 4761265 (Bankr. D. Or. Aug. 12, 2015) (if Chapter 13 debtor incurs a certain type of expense, then the debtor is entitled to deduct the full amount provided for in the National or Local Standards).

ORDERED:

1. The Chapter 13 Trustee's Objection (Doc. 43) is SUSTAINED, without prejudice to Debtors' opportunity to provide evidence of their entitlement to claim miscellaneous expenses.
2. If Debtors wish to present evidence on this issue, they may file a request for an evidentiary hearing within fourteen (14) days of this Order.
3. If Debtors do not file a request for evidentiary hearing within the time set forth, or alternatively if the parties do not reach a consent resolution, this ruling shall become final.
4. In light of this Order, the confirmation hearing currently scheduled on May 25, 2017 is CONTINUED to the Court's next regular Panama City docket.

DONE and ORDERED on May 24, 2017.



KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: all parties in interest